

Office of Legislative Counsel

OLC 78-924/a

OMB

15 APR 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

I am writing in response to your request for views on S. 2579, a bill to establish the President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. This bill is a substitute for S. 1893, a bill on which this Agency submitted a proposed report to your office on 7 October 1977. Many of our concerns about S. 2579 are identical to the problems we raised in commenting on S. 1893 and relate to the provision for granting security clearances, access to sensitive information by persons hired by the Commission, and the lack of prohibitions on the disclosure of sensitive information by the Commission or its employees.

Proposed subsection 1801(e) states that each prospective member of the Commission "shall receive all department and agency security clearances" necessary to assure access to information. This reads as if receipt of the clearances is a matter of right. This certainly is not the case, nor do I believe it is the intent of the bill. Substituting instead the phrase "must have qualified for all appropriate department and agency security clearances," would place this provision in the appropriate context.

The provisions of proposed subsection 1801(e) recognize the need for protecting national security information from unauthorized disclosure. Such information may fall into two categories: that which is classified pursuant to criteria established by Executive Order, and that which is designated pursuant to the statutory responsibility of the Director of Central Intelligence (50 U.S.C. section 403(d)(3)) as information involving intelligence sources and methods. Proposed subsection 1801(f) provides that the current National Commission will remain in existence until the

requirement, however, that these persons be required to obtain security clearances; nor are there any prohibitions on their releasing information. A provision stating that such persons are subject to the same security requirements and restrictions as the members of the Commission should be added to the bill.

Thank you for the opportunity to comment on this legislation.

Sincerely,



Acting Legislative Counsel

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer
Department of Health, Education, National Science Foundation
and Welfare Office of Science and
Department of Defense Technology Policy
Veterans Administration Department of Justice
Central Intelligence
Agency

SUBJECT: S. 2579, a bill to establish a permanent President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (NOTE: This bill was introduced on Feb. 23, 1978 by Sen Kennedy and supersedes S. 1893. See sponsor's remarks in Congressional Record, 2/23/78, page S 2182).

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than March 30, 1978.

Questions should be referred to John Lively (395-4794) or to Jim Stimpson (395-3736), the legislative analyst in this office.

Naomi R Sweeney

Naomi R. Sweeney, for
Assistant Director for
Legislative Reference

Enclosures

95TH CONGRESS
2D SESSION

S. 2579

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23 (legislative day, FEBRUARY 6), 1978

Mr. KENNEDY (for himself, Mr. SCHWEIKER, Mr. WILLIAMS, Mr. JAVITS, and Mr. PELL) introduced the following bill; which was read twice and referred to the Committee on Human Resources

A BILL

To amend the Public Health Service Act to establish the President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "President's Commission
4 for the Protection of Human Subjects of Biomedical and
5 Behavioral Research Act of 1978".

6 AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT

7 SEC. 2. The Public Health Service Act is amended by
8 adding after title XVII the following new title: